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In re Application of :
DU BOIS et al. :
Application No.: 10/521,619 : DECISION
PCT No.: PCT/US03/21575 :
Int. Filing Date: 10 July 2003 :
Priority Date: 15 July 2002 :
Attorney Docket No.: A-71748/MSS (46305-770) :
For: THERMAL PROCESSING SYSTEM :
AND CONFIGURABLE VERTICAL CHAMBER :

This is a decision on applicants' renewed petition under 37 CFR 1.47(a) filed 10 October 2006 in the United States Patent and Trademark Office (USPTO).

BACKGROUND

On 10 July 2003, applicants filed international application PCT/US03/21575, which designated the United States and claimed a priority date of 15 July 2002. A copy of the international application was communicated from the International Bureau to the USPTO on 22 January 2004. The thirty-month period for paying the basic national fee in the United States expired at midnight on 18 January 2005 (15 January 2005 being a Saturday and 17 January 2005 being a Federal holiday).

On 14 January 2005, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee and the surcharge under 37 CFR 1.492(e) for providing the oath or declaration later than thirty months from the priority date.

On 05 July 2005, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) was required.

On 10 February 2006, applicants filed a petition under 37 CFR 1.47(a) which was accompanied by, *inter alia*, a petition/fee for a five month extension of time, a declaration of inventors, a statement of facts by Maria Swiatek, a copy of a letter from Maria Swiatek to non-signing inventor Jeffrey Kowalski dated 17 January 2006, and a copy of a letter from Maria

Swiatek to non-signing inventor Jeffrey Kowalski dated 27 January 2006.

On 06 April 2006, a decision was mailed dismissing, without prejudice, applicants' petition under 37 CFR 1.47(a) because it was not clear that the non-signing inventor had been presented with the application papers. To establish a refusal to sign, it is required that the inventor be presented with the application papers (specification, including claims, drawings, and oath or declaration).

On 10 October 2006, applicants submitted the instant renewed petition under 37 CFR 1.47(a) which was accompanied by, *inter alia*, a second statement of facts by Maria Swiatek, a copy of a letter from Maria Swiatek to non-signing inventor Jeffrey Kowalski dated 22 September 2006, a copy of a USPS Express Mail mailing label for a package sent to Mr. Kowalski on 22 September 2006, a copy of a letter from Maria Swiatek to non-signing inventor Jeffrey Kowalski dated 28 September 2006, a copy of a Federal Express US Airbill for a package sent to Mr. Kowalski on 28 September 2006.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17(h); (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort; (3) a statement of the last known address of the missing inventor; and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

As noted in the decision mailed 06 April 2006, items (1) and (3) have been met.

Item (2) has now been satisfied as well.

The decision mailed 06 April 2006 indicated that item (4) had been met. However, upon further review of the declarations filed 10 February 2006, it was noted that the copy of the declaration signed by Craig Wildman is incomplete. It contains only three of the four pages (page 4 is missing). Thus, this declaration is not in compliance with 37 CFR 1.497(a)-(b).

CONCLUSION

For the above reasons, applicants' petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response, must be filed within TWO (2) MONTHS from the mail date of this decision. A proper response would be a complete copy of the declaration signed by Craig Wildman. **Failure to timely file the proper response will result in abandonment of this application.** Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)". No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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